



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW-010]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to BSH Corporation from the Department of Energy Residential Dishwasher Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. DW-010) that grants to BSH Corporation (BSH) a waiver from the DOE dishwasher test procedure for certain basic models containing integrated or built-in water softeners. Under today's decision and order, BSH shall be required to test and rate its dishwashers with integrated water softeners using an alternate test procedure that takes this technology into account when measuring energy and water consumption.

DATES: This Decision and Order is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through May 29, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. E-mail: Bryan.Berringer@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-7796. E-mail: Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants BSH a waiver from the applicable residential dishwasher test procedure in 10 CFR part 430, subpart B, appendix C for certain basic models of dishwashers with built-in or integrated water softeners, provided that BSH tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits BSH from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions of the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products.

Issued in Washington, DC, on March 19, 2013.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

Decision and Order

In the Matter of: BSH Corporation (Case No. DW-010)

I. *Background and Authority*

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III provides for the “Energy Conservation Program for Consumer Products Other Than Automobiles.”¹ 42 U.S.C. 6291-6309. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3). The test procedure for residential dishwashers, the subject of today’s notice, is contained in 10 CFR part 430, subpart B, appendix C.

DOE’s regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when 1) the petitioner’s basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or 2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially

¹ For editorial reasons, on codification in the U.S. Code, Part B was re-designated Part A.

inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. *BSH's Petition for Waiver: Assertions and Determinations*

On January 21, 2013, BSH submitted the instant petition for waiver and interim waiver from the test procedure applicable to dishwashers set forth in 10 CFR part 430, subpart B, appendix C. BSH's petition was published in the Federal Register on February 7, 2013. 78 FR 9039. DOE received no comments on the petition. In every respect except the introduction of a

new model number, the instant petition is identical to petitions submitted by BSH on February 4, 2011, December 7, 2011, March 27, 2012, and November 30, 2012 (DW-005, DW-007, DW-008, and DW-009 respectively) with the exception of the model numbers. DOE granted the February 4th petition on June 29, 2011 (76 FR 38144); the December 7th and March 27th petitions on October 1, 2012 (77 FR 59916 and 77 FR 59918 respectively). Elsewhere in today's Federal Register, DOE published a decision and order granting the November 30th petition.

BSH states that “hard” water can reduce customer satisfaction with dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage. According to BSH, a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and consumers will have less reason to periodically run their dishwasher through a clean-up cycle.

BSH also states that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener. The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness. BSH included test results and calculations showing the water and energy use of the specified dishwasher models using the same method as that used by Whirlpool in its petition for waiver, which was granted previously by DOE. (75 FR 62127, Oct. 7, 2010). Specifically, BSH requested that constant values of 47.6 gallons per year for water consumption and 8.0 kWh per year for energy consumption be used.

DOE notes that use of industry standard European Standard EN 50242, “Electric Dishwashers for Household Use – Methods for Measuring the Performance” would provide repeatable results, but would underestimate the energy and water use of the specified models. If water consumption of a regeneration operation were apportioned across all cycles of operation, manufacturers would need to make calculations regarding average water hardness and average water consumptions due to regeneration operations. In lieu of these calculations, constant values could also be used to approximate the energy and water use due to softener regeneration. As noted above, BSH provided data on the constant values that should be added to approximate the energy and water use of the basic models listed in its petition that have an integrated water softener.

Because of the variability in test results described by BSH in its petition, DOE has determined that testing the basic models for which BSH has requested a waiver according to the DOE test procedure at appendix C may evaluate the basic models in a manner so unrepresentative of their true energy and water consumption so as to provide materially inaccurate comparative data. As a result, and as described in Section III, DOE grants BSH’s waiver subject to use of the alternate test procedure prescribed by DOE.

Consultations with Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the BSH petition for waiver. The FTC staff did not have any objections to granting a waiver to BSH.

III. *Conclusion*

After careful consideration of all the material that was submitted by BSH and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the BSH Corporation (Case No. DW-010) is hereby granted as set forth in the paragraphs below.

(2) BSH shall be required to test and rate the following models according to the alternate test procedure as set forth in paragraph (3) below:

Bosch brand:

- Basic Model – SHE43T5###
- Basic Model – SHX43T5###
- Basic Model – SHE33T5###

Kenmore brand:

- Basic Model – S38KML4###
- Basic Model – S48KML2###
- Basic Model – S48KML3###
- Basic Model – S38KML5###
- Basic Model – S37KMK2###

Gaggenau brand:

- Basic Model – DF261761
- Basic Model – DF260761

(3) BSH shall be required to test the products listed in paragraph (2) above according to the test procedures for dishwashers prescribed by DOE at 10 CFR part 430, appendix C, except that, for the BSH products listed in paragraph (2) only:

In Section 4.1, *Test cycle*, add at the end, “The start of the DOE test should begin on a cycle immediately following a regeneration cycle.”

In Section 4.3, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth below:

§4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

Where the regeneration of the water softener depends on demand and water hardness, and does not take place on every cycle, BSH shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption. Constant values of 47.6 gallons/year of water and 8 kWh/year of energy shall be added to the values measured by appendix C.

(4) Representations. BSH may make representations about the energy use of its dishwashers containing integrated or built-in water softeners for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m). The dishwasher test procedure final rule, issued on September 14, 2012 and available at http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/aham-1_tp_final_rule.pdf, includes procedures to measure the energy and water use of integrated or built-in water softeners. The compliance date for these procedures is May 30, 2013. Therefore, this Decision and Order is valid through May 29, 2013. Beginning on May 30, 2013, all manufacturers must use the amended test procedures to determine the energy and water use associated with water softener regeneration.

(6) This waiver is granted for only those models specifically set out in BSH's petition, not future models that may be manufactured by BSH. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional dishwasher models for which it seeks a waiver from the DOE test procedure. Grant of this waiver also does not release BSH from the certification requirements set forth at 10 CFR part 429.

(7) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on March 19, 2013.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

[FR Doc. 2013-06743 Filed 03/22/2013 at 8:45 am; Publication Date: 03/25/2013]